

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt of applicant's amendment filed on 12/18/09 is acknowledged.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molitor (4407266) in view of Hepner (4235220) (cited on applicant's IDS).
4. Molitor discloses at least one hood (10), which is intended to be installed above the kitchen appliance (col. 3, lines 17-20), an exhaust-air connection (17 and 25) for connecting the hood to the exhaust duct (12), and a separator (E), for separating grease from the exhaust air (see "liquid particles" col. 7, lines 9-24), exhaust-air duct (12); an intake air connection (D) that is capable of varying the exhaust temperature and flow using a temperature sensor (42) (Figure 1), a heat exchanger (H), a motorized fan (col. 6, line 18) and a damper (68).

Molitor, as discussed above, discloses the invention of claim 11 with the exception of a grease separator arranged as claimed. Molitor shows only one separator (E) located near the hood (10), but does not show a grease separator arranged in the exhaust duct as claimed inside of a "cell". Molitor shows the air bypass duct (D) joining the exhaust stream at a point just downstream of the first grease separator (E).

Hepner discloses a system for ventilating an appliance including an oven hood (12) with one separator (Figure 4, see element 52) located adjacent the hood, and a second separator (60) located inside the exhaust duct (58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Molitor apparatus to include a second separator in the exhaust duct (12), in order to remove any particles or odors remaining in the exhaust stream that have not been extracted by the previous filter (Hepner, col. 5, lines 35-38).

Molitor discloses that the grease filter is in communication with a temperature sensor (42). When placing an additional grease filter, it would have been obvious to one of ordinary skill in the art to include a temperature sensor near that device.

The examiner considers Hepner to suggest placing the filter in the exhaust duct (12), which would allow the temperature controlled exhaust stream to flow through as claimed. The position of the filter inside the exhaust duct is regarded as being inside of a cell in the same manner as applicant's invention.

Regarding the limitation that the cell is arranged downstream of the hood, it is clear from Figure 1 that exhaust air first enters the exhaust duct, and then is mixed with intake air in a downstream location.

However, it is not clear if the intake air assembly is "separate from the hood". Molitor discloses that the hood has two components, a ventilating or exhausting part (V), and an intake air control assembly (M). Figure 1 shows them to be connected by a housing (10), but they are disclosed to be separate devices (col. 3, lines 10-15).

Therefore, Moliter arguably discloses the claimed feature of providing the air intake connection separately from the hood.

However, in the event applicant disagrees, the courts have held that if it were considered desirable for any reason to obtain access, it would be obvious to make a cap removable for that purpose (In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961), Also MPEP 2144.04 Section C).

Therefore, it would have been obvious to one of ordinary skill in the art to make the Moliter ventilation assembly (V) and the air intake control assembly (M) separable in order to easily maintain or repair components of either assembly without lifting the entire apparatus.

Regarding the limitation that the intake and exhaust air are mixed to a temperature designed to cool the separator, Moliter discloses using temperature means to adjust the temperature of the intake air before mixing it with the exhaust stream just before entering the exhaust duct (see Figure 1), and Hepner shows placing a grease separator in the exhaust duct. Therefore, the combined device will function to provide a temperature controlled stream onto the separator.

Regarding claims 12 and 13, the cell is regarded as elongated and horizontal, and Hepner is regarded to suggest placing a filter in the claimed location.

Regarding claim 14, Moliter shows a duct (D), but does not explicitly show nozzles attached to the duct. However, the examiner takes Official Notice that it was old and notorious in the art to use nozzles to supply air. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify

Art Unit: 3749

the Moliter apparatus to include air supplying nozzles, for the well known purpose of increasing the velocity of the air supplied through the duct.

Regarding claim 15, intake air duct (D) is joined to ventilation duct (13).

Regarding claim 16, elements 26 and 27 are regarded as baffles.

Regarding claim 17, water is supplied through nozzles (38).

Regarding claims 18-20, Moliter does not disclose the relative dimensions of the air duct. The courts have held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. (In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), also MPEP 2144.04).

In this case, the precise size and shape of the mixing cell is a matter of obvious design choice, and the capacity of the airflow through it will obviously vary with the selected size.

### ***Response to Arguments***

5. Applicant's arguments filed 12/18/09 have been fully considered but they are not persuasive. Applicant argues that the prior art device is incapable of cooling a grease separator. However, Moliter discloses in multiple places in the specification that the heat exchangers are operable to supply either heated or cooled air (col. 2, lines 62-67).

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Suereth whose telephone number is (571)272-9061. The examiner can normally be reached on Mondays & Tuesdays 8:00AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah Suereth/  
Examiner, Art Unit 3749

/Steven B. McAllister/  
Supervisory Patent Examiner, Art Unit 3749